

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Cr1.MC.No. 163 of 2015

AGAINST THE ORDER IN CMP 13731/2014 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, NEYYATTINKARA

PETITIONER/PETITIONER:

S.ARUN, AGED 30 YEARS,
S/O.SATHYADAS, ARUN BHAVAN, MANGALATHUKONAM,
MEKOLLA, DHANUVACHAPURAM P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.BREJITHA UNNIKRIISHNAN

RESPONDENTS:

1. THE STATE OF KERALA
REP. BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.

2. SREELATHA RAJAYYA, AGED 49 YEARS,
S/O.REV.RAJAYYA, ENCHELVILLA, NEDIYAMCODE DESOM,
PARASUVALKKAL P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM - 695 508.

R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 163 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: COPY OF THE ORDER DATED 23.5.2014 IN IA NUMBER
2728/2014 IN O.S.NO. 538/2014 BY THE ADDL.MUNSIFF COURT,
NEYATTINKARA.

ANNEXURE-B: COPY OF THE FIR IN CR.NO.1120/13

ANNEXURE-C: COPY OF THE ORDER IN CMP 13731/2014 DATED
20.12.2014 OF THE JFCM-III, NEYYATTINKARA

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.163 of 2015

Dated this the 12th day of January, 2015

O R D E R

The petitioner herein is the registered owner of the Car No.KL-01-AJ 1881. In Crime No.1120/2013 the Parasalla Police seized the said vehicle and produced it in court. The petitioner herein made a claim under Section 451 of the Code of Criminal Procedure for interim custody of the vehicle, and the respondents also made a rival claim. The petitioner's claim was filed as C.M.P No.13731/2014 and the respondents claim was filed as C.M.P No.13732/2014.

2. After hearing both sides, the learned Judicial First Class Magistrate Court II, Neyyattinkara allowed the petitioner's application on certain conditions, and further directed that in case the petitioner failed to comply with the conditions, the vehicle will be released to the respondent. That particular part of the order making an alternative option for release of the vehicle under Section 451 of the Code of Criminal Procedure is under challenge. Practically the order is in favour of the petitioner, and of course he will have to comply with some conditions. It is not known whether the respondent has brought proceeding, challenging the said order. In fact the

respondent cannot be said to be a beneficiary of the said order because she will get the vehicle, even if such order could be enforced, only when the petitioner failed to comply with the conditions. When the court makes an order under Section 451 of the Code of Criminal Procedure, for interim custody of a property, the order must be definite and it must be in favour of the person who has right to possess the property, either subject to final decision under Section 452 of the Code of Criminal Procedure, or subject to decision by a competent civil court. Here it is submitted that a civil case is pending. So final decision will have to be taken by the civil court. No doubt, the petitioner will have the right to possess the vehicle as the registered owner of the vehicle. If so, the court below, exercising the powers under Section 451 of the Code of Criminal Procedure, cannot direct release of the vehicle to somebody else once it is found that the petitioner is the right person to possess the vehicle. If he wants the vehicle he will definitely comply with the conditions. If he doesn't comply with the conditions the vehicle will continue in court custody. I find that the second part of the order under challenge is liable to be set aside, and the vehicle will have to be released to the petitioner, on compliance of the conditions.

3. The petitioner is also aggrieved by one of the conditions, directing him to deposit ₹6 lakhs before the court. It is not

known why such a condition is imposed by the court below. Admittedly, the petitioner is the registered owner of the vehicle and the respondent claims possession on the contention that some money was advanced by her to purchase the vehicle. This is a matter to be looked and decided by the civil court. As the registered owner the petitioner has every right to possess the vehicle without being questioned by anybody. The other conditions imposed by the court below will serve the purpose in the present circumstances. It would be unjust and inappropriate to direct deposit of ₹6 lakhs as a condition for getting custody of the vehicle. In the result, this Criminal Miscellaneous Case is allowed, as follows:

i) The second condition imposed by the court below directing deposit of ₹6 lakhs will stand set aside.

ii) The second part of the impugned order directing release of the vehicle to the respondent in case the petitioner failed to comply with the directions, will also stand set aside.

**P.UBAID
JUDGE**

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